Filed 7/23/19 In re A.M. CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re A.M., a Person Coming Under the Juvenile Court Law.	
SONOMA COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. SAVANNAH L. et al.., Defendants and Appellants.	A156354 (Sonoma County Super. Ct. No. DEP-5227)

Savannah L. (Mother) and Matthew M. (Father, collectively the parents), parents of two-year-old A.M., appeal from the orders made at the six-month review hearing, including the finding that the Sonoma County Human Services Department/Family Youth and Children Services (Department) provided them with reasonable reunification services. Both parents contend substantial evidence does not support the juvenile court's reasonable services finding in light of the Department's delay in assisting them in obtaining sexual abuse counseling services in San Bernardino County. We shall affirm the court's orders.

FACTUAL AND PROCEDURAL BACKGROUND[1]

The Department's involvement with Mother began in 2013, when it filed a petition concerning F.K. and S.K., the two older children of Mother and Charles K.[2] The case was dismissed that same year, but a new petition was filed as to F.K. and S.K. in February 2017, which concerned Mother's failure to obtain necessary medical treatment for F.K. Both of the older children were removed from Mother's custody in mid-2017, with reunification services ordered.

On July 27, 2017, Mother and Father submitted to the Department's recommendation that the court find A.M. a dependent of the court in the custody of his parents, under the supervision of the Department, which would provide family maintenance services, and the court so ordered.

On October 26, 2017, the Department filed subsequent petitions, pursuant to Welfare and Institutions Code[3] section 342, alleging that F.K., S.K., and A.M. came within section 300, subdivision (d) because they had been sexually abused or were at substantial risk of sexual abuse. With respect to F.K. and S.K., the petition alleged that Mother had exposed them to "multiple pornographic films depicting child on child sexual encounters, while sharing a bed with [Father] and one or both of the minors, over an extended period of time," as revealed in a forensic interview with F.K. As a result of exposing F.K. to child sexual abuse, F.K. "has engaged in sexualized behavior directed at other children, including his sibling." F.K. also reported that he had witnessed a boy having sex with S.K. at the Sundance Native American festival he and S.K. attended with

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[1] Because the parties are familiar with the factual history of this case and because this appeal concerns only A.M., not his older half siblings F.K. and S.K., the factual background in this opinion will focus on A.M. and facts relevant to the issue raised on appeal.

[2] Charles K. is the father of F.K. and S.K. only. He did not appear in the juvenile court proceedings and is not a party to this appeal.

[3] Further statutory references will be to the Welfare and Institutions Code.

their father, Charles K. F.K. said he told his parents about this incident, but they did not do anything.

As to A.M., the petition alleged that he was at risk of sexual abuse as a result of the exposure of his two half siblings to pornographic films.

In amended subsequent petitions filed as to all three children on November 16, 2017, the Department added allegations, which F.K. had disclosed during a November 15 forensic interview, that he had performed sexual acts on adults and children at the direction of both Charles K. and Father. F.K. also reported that he had been separately recorded by both men while performing such acts, that S.K. was directed to perform sexual acts on adults and was also recorded, and that Mother "was present and involved during many of these incidents."

In a January 2018 jurisdiction report, the social worker reported that in October 2017, the Department and the parents had established a safety plan for A.M. to ensure that he was not at risk of sexual abuse. The plan called for the maternal grandmother to move into the home and be with A.M. at all times when the parents were present. In late December, the social worker learned during a home visit that the maternal grandmother had moved out of the home. The parents had not advised the Department of this change when it took place.

The Department recommended that Mother continue to receive family reunification services as to F.K. and S.K. The Department recommended that A.M. be removed from the care of Mother and Father, and that the parents receive family reunification services.

On January 10, 2018, the Department filed second amended subsequent petitions (subsequent petitions) as to F.K., S.K., and A.M., which contained more specific allegations regarding the sexual abuse already alleged.

On March 20, 2018, the social worker filed a status review report in which she reported that A.M. remained in the parents' care. In addition, Mother had reported that she and Father did not consider Sonoma County their home and hoped to have the

dependency case dismissed or transferred to San Bernardino County, where her support network—including her grandparents and mother—lived.

The contested hearing on the subsequent petitions took place over five days, between April 13 and May 18, 2018. Both Father and Mother testified at the hearing.

Father testified that he had never seen sexualized behavior from either F.K. or S.K. and had never watched movies with a rating beyond PG with the children. Nothing that F.K. said about him and Mother in the forensic interviews regarding sexual activity was true. Father had previously been present for some supervised visits between F.K., S.K., and Charles K. Around 2016, Mother had occasionally left the children with Charles K. for a day of unsupervised visitation in Oregon. Father could not say whether a child would be safe in Charles K.'s home.

Mother testified that she had never exposed her children to any kind of pornography and had not engaged in any sexual conduct in front of them. She had only recently learned of allegations of sexual conduct involving Charles K. and his girlfriend. When asked whether she believed the allegations, Mother testified that "it was hard to decide, you know, to believe or not to believe because it was hearsay" that she had heard through the Department. There was nothing in her relationship with Charles K. that would cause concern that the allegations could be true. She believed F.K. needed to continue with therapy and that more information was needed because "there's so many inconsistencies with some of the stories." However, Mother did not think F.K. and S.K. should visit with Charles K. because "there's serious concern that something's definitely happened to my son."

Mother had completed a two-hour online course called "Reducing the Risk of Child Sexual Abuse," and she described what she had learned in the course. She wanted F.K. and S.K. to participate in a program for sexual abuse victims and had started compiling a list of local resources. Mother now believed that F.K. was sexually abused since he had "learned these things from somewhere." She believed "he was exposed to either direct or indirect sexual abuse. Sexual abuse, possibly content. It could have been pornography. It could have been children. It could have been adults. It could have been

both." But she did not know if any of the stories he had reported about what happened to him had actually occurred. She did not know if S.K. had been sexually abused. Mother believed it was her responsibility to educate herself and her children to help the children heal and to prevent them from being exposed to any sexual abuse. Mother did not believe it was her fault that her child was sexually abused and she had no reason to know her children were at risk when she sent them to be with Charles K.

Social worker Romero testified, with respect to A.M., that she no longer believed he was safe in Mother and Father's care. This was because the parents were protective of Charles K. and claimed they did not know his whereabouts, which prevented investigation of the sexual abuse allegations against him. In addition, they did not acknowledge the sexual abuse of F.K. and S.K. until the current hearing, they did not follow the safety plan for A.M., and they said they did not have computers, but then brought a laptop computer to a meeting at the Department.

On May 18, 2018, at the conclusion of the hearing on the subsequent petitions, the court found, by a preponderance of the evidence, that F.K. had been sexually abused. The court then found the allegations of the subsequent petitions true, ordered A.M. detained based on his sibling having been molested in the home of a parent, and ordered the matter continued for an 18-month review hearing as to F.K. and S.K. and a 6-month review hearing as to A.M.[4]

The court also addressed the parents' request to transfer the case to San Bernardino County, stating: "I have suggested . . . many times that if the parents are going to be successful, they should have the best support network around them, and that appears to be the San Bernardino support network." The court stated that it was willing to sign a transfer order as soon as Mother and Father established that they were actually living in San Bernardino County.

[4] On July 9, 2018, Mother filed a notice of appeal from the court's orders on the subsequent petitions as to F.K., S.K., and A.M. Also on July 9, 2018, Father filed a notice of appeal from those orders as to A.M. Those appeals are currently pending in case No. A154789.

In reports filed on October 9 and 31, 2018, for the 18-month status review hearing, the social worker reported that A.M. remained in an emergency foster home in Sonoma County. In June 2018, the parents had moved to San Bernardino County to be closer to Mother's family. The court had ordered the case transferred to San Bernardino County on July 12, but San Bernardino County did not accept the transfer and sent the case back to Sonoma County.

The social worker further reported that on July 10, 2018, she had met with the parents to discuss their case plan goals, which included "understanding [the] impact of sexual abuse on [the] family system, continu[ing] to remain involved in medical treatment, [and staying] involved with schooling." The parents declined a referral to the SAFER program for sexual offenders in Sonoma County because they wanted to participate in services in San Bernardino County.

The parents had initially been hesitant to participate in a sex offender treatment program, expressing a desire to participate instead in therapy or other services focused on education about child abuse in general. More recently, however, they had expressed a willingness to participate in whatever services the Department recommended, so long as they were in San Bernardino County, although they continued to deny F.K. or S.K. had been sexually abused. In August 2018, after the social worker received a recommendation from the San Bernardino County social services agency, the social worker had referred the parents to the Center for Healing, through which the parents had begun participating in individual treatment. In addition, the social worker had met once or twice a month with the parents between May and September 2018, and also had weekly phone calls and email communication with them.

The Department recommended that Mother's reunification services be terminated as to S.K. and A.M., that Father's reunification services be terminated as to A.M., and that the matters be set for a section 366.26 hearing.

At the December 17, 2018, 18-month review hearing, the court first heard argument on Mother's section 388 petition for modification, in which she had asked the court to transfer the case back to San Bernardino County, after the San Bernardino

County court rejected the first transfer order. Counsel for the Department stated that she believed jurisdiction was properly in San Bernardino County but, given the San Bernardino County court's rejection of the transfer, the Department continued to provide services to avoid keeping the family "in limbo." The court deferred ruling on the request to transfer the case until the conclusion of the hearing.

Social Worker Hillary Conrad testified that on July 10, 2018, she had a team meeting with the parents to develop a case plan, during which they discussed sex offender-based therapeutic treatment programs, specifically the SAFER program. Mother and Father rejected that program because they now lived in San Bernardino County and wanted to participate in an "individual-therapy-based program" in that county. In August, Conrad found an alternative program in San Bernardino County at the Center for Healing, a community agency that works with children, parents, and families in which sexual abuse has occurred. Conrad gave the parents information regarding the Center for Healing on August 24, after determining that its program involved comprehensive services and was comparable to what was offered by the SAFER program.

Conrad had had "numerous phone calls" with the Center for Healing when services there were being set up to clarify what the Department was looking for and to provide background information. Conrad had continued to be in contact with the program's clinician to confirm the parents were attending and to work on how the treatment could be sustainable on an ongoing basis. Conrad testified that "[c]ommunication has been difficult in that we will play phone tag back and forth, but overall I have been in consistent communications with [the clinician] about services and really working to ensure these services can continue."

Jeanne Smith testified that she works as a therapist at the Center for Healing. Smith was providing individual and conjoint therapy for Mother and Father, and had met with them eight times, which was a minimal time for progress. If the court allowed, Smith could continue to provide them with services, which she believed would require at least 12 additional months. There was also a parenting program at the Center for

Healing, which would not begin until March or April of the following year. Smith would also recommend that the parents attend a group for perpetrators, which the Center for Healing offered periodically when there were enough parents to comprise a group. Mother had been open to treatment; she had not missed any appointments, answered questions without defensiveness, and took suggestions openly. Father was very cautious, but also had been open to treatment. Smith believed that she had built up a trusting relationship with both parents.

Smith testified that both Mother and Father had stated what the sexual abuse allegations were, but had not taken responsibility for the abuse the children had suffered and the trauma they described was more related to their placements than to sexual abuse. Mother had, however, acknowledged that F.K. was sexually abused by a boy at the Sundance festival and possibly by his biological father (Charles K.) and his girlfriend. She had not acknowledged any sexual abuse by her or Father. Father had also acknowledged that the children had been sexually abused, but not that he had a role in that abuse.

Mother testified that she had learned in therapy with Smith that it is very common for the statements of children who have been sexually abused to have inconsistencies. Mother now believed F.K. was sexually abused by Charles K., in part because she had now seen all of the forensic interviews with F.K. Mother had previously been in individual therapy in Sonoma County from September 2017, in person, through May 2018, and then by phone after she moved to San Bernardino County, until she started therapy with Smith. Mother had also discussed issues related to sexual abuse with her prior therapist.

Father testified that he now believed that F.K. was sexually abused by Charles K. He did not know whether S.K. had been abused, although he believed that she was involved in inappropriate activities with F.K., which could have been prevented with more supervision. Father believed F.K. had been severely traumatized by the sexual abuse. He further believed that Smith, the therapist from the Center for Healing, was

extremely qualified and that there had "been a lot of progress with the sessions that we have had, and I can only look forward to more of the same."

At the conclusion of the hearing, the court found that reasonable services had been provided to Mother with respect to F.K. and S.K., terminated her reunification services as to those two children, and set the matter for a section 366.26 hearing. As to A.M., who was at the six-month review stage, the court found that reasonable services had been provided and that there was "a likelihood that if provided with additional services, reunification is possible. So that process will continue on." The court then transferred A.M.'s case to San Bernardino for the 12-month review.[5]

On January 25, 2018, Mother filed a notice of appeal from the court's orders as to A.M. at the conclusion of the six-month review hearing, and on January 28, Father filed a notice of appeal from those orders.[6]

DISCUSSION

The parents contend substantial evidence does not support the juvenile court's reasonable services finding in light of the Department's delay in assisting them in obtaining sexual abuse counseling services in San Bernardino County.

" ' "Reunification services implement 'the law's strong preference for maintaining the family relationships if at all possible.'. . ." . . . The department must make a " ' "good faith effort" ' " to provide reasonable services responsive to the unique needs of each family. . . . "[T]he plan must be specifically tailored to fit the circumstances of each family . . . , and must be designed to eliminate those conditions which led to the juvenile

[5] On December 19, 2018, the court also transferred F.K. and S.K.'s case to San Bernardino County. The record reflects that the San Bernardino juvenile court then ordered the cases transferred back to Sonoma County again.

[6] On January 30, 2019, Mother filed a notice of intent to file writ petition, challenging the court's orders as to F.K. and S.K. On May 31, 2019, this court filed an opinion denying Mother's petition for extraordinary writ. (*Savannah L. v. Superior Court* (May 31, 2019, A156346) [nonpub. opn.].) In the opinion, we rejected Mother's contention that the Department did not provide her with reasonable services due to the delay in referring her to sexual abuse counseling services in San Bernardino County.

court's jurisdictional finding. . . ." . . . The effort must be made to provide reasonable reunification services in spite of difficulties in doing so or the prospects of success. . . . The adequacy of the reunification plan and of the department's efforts to provide suitable services is judged according to the circumstances of the particular case. . . . "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult. . . ." ' [Citations.]" (*In re K.C.* (2012) 212 Cal.App.4th 323, 329-330 *(K.C.*); accord, *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598 (*Katie V.*).)

We review the juvenile court's reasonable services finding for substantial evidence. (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 419.)

"For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care . . . unless the child is returned to the home of the parent or guardian." (§ 361.5, subd. (a)(1)(B); see Cal. Rules of Court, rule 5.710(a)(4).) However, "[t]he court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent . . . ." (§ 366.21, subd. (g)(1)(C)(ii); accord, § 361.5, subd. (a)(3); Cal. Rules of Court, rule 5.708(c).)

Here, at the conclusion of the six-month review hearing, the court found that reasonable services were provided to the parents, but also found that there was "a substantial probability that, with the continuation of services [to the parents, A.M.] may be safely returned to [their] physical custody during the extended service period." The

court therefore continued reunification services for an additional six months. The parents now challenge the court's reasonable services finding only.[7]

As we shall explain, substantial evidence supports the court's finding that reasonable services were provided for the same reasons set forth in our opinion denying Mother's petition for extraordinary writ as to her two older children, in which she made an argument nearly identical to the one the parents make here as to A.M. (*Savannah L. v. Superior Court*, *supra*, A156346.)

Specifically, the record reflects that the social worker regularly met with the parents one or two times per month and had weekly email and phone communication with them, even after they moved to San Bernardino County in June 2018, although the case was not transferred to that county until July.

Both parents were initially in denial about the sexual abuse F.K. had suffered, and were hesitant to participate in a sex offender treatment program. Moreover, during a meeting with social worker Hillary Conrad on July 10, 2018, two days before the juvenile court transferred the case to San Bernardino County, the parents rejected the case plan because it included a sex offender-based therapeutic treatment program in Sonoma County and they now lived in San Bernardino County, and wanted to participate in an "individual-therapy-based program" in that county. Conrad therefore investigated alternative programs in San Bernardino County.

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[7] As a preliminary matter, the Department argues that the court's reasonable services finding is not appealable because "the juvenile court took no adverse action against [either parent]; nor were they aggrieved by the finding." We find it unnecessary to definitively decide this question, on which appellate courts have expressed differing views (see, e.g., *In re T.W.-1* (2017) 9 Cal.App.5th 339, 345, fn. 6; *In re T.G.* (2010) 188 Cal.App.4th 687, 692-696; *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1153-1156) because even if we were to conclude the parents may not challenge the reasonable services finding on direct appeal, we would exercise our discretion to treat the notice of appeal as a writ of mandate. (See *Melinda K.*, at p. 1153 [court's reasonable services finding was unappealable, but "may be challenged by petition for writ of mandate"].)

In August 2018, Conrad found such a program at the Center for Healing, which the parents began attending in September, after Conrad had multiple phone calls with the center to clarify what the Department was looking for and to provide background information.[8] Conrad had continued to be in contact with the program's clinician to confirm that the parents were attending and to work on how the treatment could be sustainable on an ongoing basis. Mother, Father, and the new therapist testified about the positive impact of the therapy the parents were receiving through the Center for Healing in San Bernardino County, although the therapist believed that at least 12 additional months of therapy were necessary.

Hence, while the parents' move to San Bernardino County made it more challenging for the Department to provide them with timely sexual abuse treatment, once the parents made clear that they would not be willing to participate in such a program in Sonoma County, the social worker made reasonable efforts to connect them with an equivalent program in San Bernardino County as soon as possible.

This case is distinguishable from *In re Alvin R.* (2003) 108 Cal.App.4th 962, 972-973, relied on by Father, in which the appellate court found that reasonable services were not provided because the social services department failed to make any effort to overcome obstacles to getting the child into counseling, causing a delay of five months in obtaining these services. The counseling was also a prerequisite to conjoint counseling with the father, a critical step because the child had refused to visit with the father. (*Ibid.*; see also *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1012-1013 [where department failed to contact father, who was incarcerated, for 13 months of 17-month reunification period, reasonable services were not provided].) Here, although the social worker did not locate a therapist specializing in sexual offender-related treatment in San Bernardino County until August 2018, some three months after disposition, the

[8] In addition, Mother had been able to continue therapy with her Sonoma County therapist by phone after she moved to San Bernardino County, until she began therapy through the Center for Healing.

evidence—as discussed, *ante*—shows that the case was not transferred to that county until July 2018, and that the Department had attempted to refer the parents to a Sonoma County program just before the transfer. Moreover, the parents had both initially been reluctant to participate in a sexual offender program. Finally, once the case was transferred, the social worker investigated programs in San Bernardino County and was able to refer the parents to the Center for Healing in August. The evidence thus shows that the Department's efforts, even if not perfect, were reasonable in the circumstances of this case. (See *Katie V.*, *supra*, 130 Cal.App.4th at p. 598; *K.C.*, *supra*, 212 Cal.App.4th at p. 330; see also *Melinda K. v. Superior Court*, *supra*, 116 Cal.App.4th at p. 1159 [six-month delay in obtaining counseling for child, which resulted from caretaker's failure to request assistance and a change in assignment of social workers, "rendered the services provided imperfect, but rarely will services be perfect"].)

In sum, the record reflects that the Department made "a good faith effort to address [the parents'] problems through services, to maintain reasonable contact with [them] during the course of the plan, and [made] reasonable efforts to assist [them] in areas where compliance prove[d] difficult." (*Katie V.*, *supra*, 130 Cal.App.4th at p. 598; see also *K.C.*, *supra*, 212 Cal.App.4th at p. 330.) Substantial evidence supports the court's finding that reasonable reunification services were provided. (See *In re Patricia W.*, *supra*, 244 Cal.App.4th at p. 419.)

DISPOSITION

The juvenile court's orders are affirmed.

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Kline, P.J.

We concur:

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Richman, J.

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Stewart, J.

In re A.M. (A156354)